



# Republican Policy Committee

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## Oops! Nominee to Court of Appeals Can't Answer Simple Questions About Major Cases

Charles R. Stack raised about \$7 million for Bill Clinton's 1992 presidential campaign, and in 1994, with one dinner, he raised another \$3.4 million for the Democratic National Committee. Somebody at the White House seems to think this qualifies him for a lifetime appointment to the Federal bench: President Clinton has nominated him to the United States Court of Appeals for the 11th Circuit (comprising the states of Florida, Georgia, and Alabama).

The Judiciary Committee held a hearing on February 28. The nominee did not distinguish himself.

Mr. Stack has practiced law for some 35 years, primarily as a personal injury lawyer. He has no judicial experience. Ninety-nine percent of his work has been civil litigation, usually in state courts. His legal writing consists entirely of articles for the newspaper of the Dade County Police Benevolent Association. The opinions he expressed in some of those articles are going to be of intense interest to Senators, but in this short RPC paper we will *not* focus on Mr. Stack's controversial views. This paper is about those views that Mr. Stack altogether lacks.

### Never Heard of *Adarand*

At his hearing, Mr. Stack said he had no knowledge of last year's decision of the U.S. Supreme Court in *Adarand Constructors v. Pena*, 115 S. Ct. 2097, which is a momentous decision on affirmative action, equal protection of the laws, and congressional power. By a 5-to-4 vote, the court held that affirmative action plans, even when established by Congress, would be subjected to strict judicial scrutiny, passing that high test only if the plans were narrowly tailored to achieve a compelling governmental interest.

It is hard to understand how a prominent lawyer could have missed *Adarand*, a decision that is now just nine months old. On the day it was handed down, June 12, 1995, news of the decision led the nation's newscasts, and the next day every major newspaper in America carried the story on the front page and the President of the United States issued a formal statement. Since then, *Adarand* has been a prominent fixture of public and professional debate.

Mr. Stack, however, had never heard of *Adarand*.

At the hearing, Senator Kyl asked Mr. Stack if he were "aware of the Supreme Court's decision last term in the *Adarand* case, *Adarand v. Pena*?"

Mr. Stack replied, "I do not usually catalog cases by name. I might be aware of the case."

Senator Kyl tried to help. "That is the most recent case dealing with this difficult area of affirmative action."

"I am not certain that I am aware of that case," Mr. Stack replied.

Senator Kyl then said, "Do you believe that a police department or other government agency's hiring policy which requires higher civil service test scores for certain applicants, based on race, national origin, or gender . . . [is] unconstitutional, particularly in [light of] the *Adarand* decision, which you indicated you are not necessarily familiar with?"

Mr. Stack was lost. "I don't have an opinion as to whether they're unconstitutional or not," he said. "[If] I were familiar with the *Adarand* decision, I would be greatly enhanced in my ability to give an intelligent answer to that question. . . ."

### **Can't Help on Law of Fourth Amendment**

Mr. Stack didn't do much better on criminal law. Senator Kyl asked him about the notorious, recent (January 22) decision from New York City in which Federal District Court Judge Harold Baer suppressed some 75 lbs. of cocaine and 4 lbs. of heroin that were discovered in the trunk of a rented car under circumstances that the police regarded as suspicious. "What is your understanding of the law of search and seizure that applies to this type of situation?"

Mr. Stack said he had no opinion on the case because he didn't have all the facts, but that he "would certainly applaud the use of all evidence which is legally obtained." On the other hand, he didn't "believe in throwing away the constitutional guarantees that each of us in America is afforded." First, that answer is not responsive, he was asked about his understanding of the law, and second, that answer is not helpful. Mr. Stack sounds less like an experienced attorney than a schoolboy who has been stumped by an exam question. Nominees to the second highest courts in the land ought to have something more important to say to Senator Kyl's question than, "I oppose crime and I also support the Constitution."

Mr. Stack's performance at his hearing helps explain why many pro-family, pro-growth legal groups are opposing his nomination. The Institute for Justice, the Landmark Legal Foundation, the Lincoln Legal Foundation, the National Legal Foundation, the Southeastern Legal Foundation, and many other groups have written that they "oppose Mr. Stack's nomination because he is clearly not qualified for the job."

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(Quotations in this paper are taken from the transcript of the Judiciary Committee's proceedings.)